

POLICY BRIEF

APRIL 2013

THE EVOLUTION OF VIETNAM'S LEGAL AND POLICY FRAMEWORK ON SEX WORK AND HIV/AIDS

The HIV epidemic in Vietnam is concentrated among most at-risk populations and driven primarily by injection drug use among men. Additionally, sexual transmission and HIV infections among women are on the rise according to Vietnamese government estimates¹. According to the results of 2012 sentinel behavior surveillance survey in 32 provinces, the average HIV prevalence rate among sex workers is 2.7%. Sex workers are at risk for acquiring HIV from clients and transmitting it to their clients. HIV prevalence increased among sex workers in some provinces, including Ho Chi Minh City (HCMC) and Haiphong between 2006 and 2009². Effective HIV prevention interventions for sex workers and clients are needed but an enabling legal and policy environment is required for such interventions to be widely and effectively implemented.

USAID and PEPFAR are contributing to Vietnam's efforts to improve the legal and policy environment for HIV/AIDS prevention, care and treatment through the Health Policy Initiative Vietnam (USAID/HPI)³. One of USAID/HPI's key result areas is to assist the government of Vietnam in adapting and implementing national and local HIV/AIDS policies, plans and programs based on international best practice.

This policy brief summarizes the existing legal framework on sex work. It also details recent developments that shift the focus of government policies to harm reduction interventions to prevent the spread of HIV among sex workers and their clients. Finally, this brief outlines recent changes towards harmonization of multiple policies and offers some recommendations for the continued development and improvement of the legal and policy framework on sex work and HIV/AIDS.

The existing legal framework

Vietnam's primary legal document on sex work is the *Ordinance on Prostitution Prevention and Control (2003)*. The fundamental objective of this ordinance is to "prevent and combat prostitution", and it strictly prohibits the buying and selling of sex as well as the related activities of harboring, organizing, and protecting prostitution. The ordinance requires all agencies, organizations and individuals to report any violations of its provisions. Its focus is almost entirely on the prevention and punishment of prostitution although there is also brief mention of job creation and community re-integration of sex workers.

The ordinance directs that prostitution prevention and control be closely combined with HIV/AIDS prevention and control but provides no specifics on how this should be done. The only HIV prevention strategy mentioned is the prohibition of sex workers' deliberately transmitting HIV; however, there is no reference in the ordinance to condoms or condom provision. There is language prohibiting possession of products and items of a pornographic nature or whose presence might indicate the practice of prostitution; and, while condoms are not illegal, police sometimes continue to treat the possession or presence of condoms as evidence of prostitution.

The Ordinance's *Implementing Decree (No. 178/2004/NG-CP)* focuses on prevention and punishment and calls for Provincial People's Committees at all levels to establish inter-branch inspection teams to combat prostitution. The decree links prostitution control with HIV/AIDS control without providing any specific guidance on how this should be

¹ Vietnam Administration of HIV/AIDS Control. 2009. Vietnam HIV Estimates and Projections 2007-2012. Ministry of Health, Hanoi.

² Ministry of Health of Vietnam, Results from HIV/STI integrated Biological and Behavioral Surveillance (IBBS) in Vietnam, round II 2009, Vietnam 2011.

³ This initiative is made possible by the generous support of the American people through the United States Agency for International Development (USAID) and President's Emergency Plan for AIDS Relief (PEPFAR). The author's views expressed in this publication do not necessarily reflect the views of USAID or the United States Government.

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done. The only provision related to public health is one calling for service establishments (a euphemism for “entertainment establishments” offering sexual services) to organize quarterly health checks for their employees.

The legal and policy framework on HIV/AIDS prevention advanced significantly with the passage of Vietnam's *Law on HIV/AIDS Prevention and Control* (2006) and the promulgation of *Implementing Decree 108* (2007). These documents call for the implementation of harm reduction interventions, including peer education and condom provision specifically in the context of sex work, and recognize sex workers as an important target population for HIV/AIDS prevention services. Nevertheless, the basic legal framework on sex work embodied in the Ordinance on Prostitution Prevention and Control and its implementing Decree 178 remains in force but is increasingly inconsistent with the overall approach and requirements of the *Law on HIV/AIDS Prevention and Control* and Decree 108. In the last few years, there have been increasing efforts to address these inconsistencies in the legal and policy framework.

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Recent developments to address the legal and policy framework

Harm reduction interventions for sex workers and clients have been expanded since the enactment of the *Law on HIV/AIDS Prevention and Control*, and new documents have begun to align the legal and policy environment with the intervention landscape. Interventions include peer outreach and condom social marketing. There have even been discussions at several national workshops and at the provincial level in HCMC about allowing “red light districts” where sex work would be tolerated and regulated to prevent disease transmission. The *Law on Handling Administrative Violations*, enacted in 2012, completely eliminates commitment of sex workers to 05 centers. Most 05 centers have already been closed and the rest will be phased out in the near future.

USAID, CDC and PEPFAR partners have been at the forefront of implementing harm reduction interventions for sex workers and their clients. In 2010, USAID/HPI collaborated with local authorities and PEPFAR implementing partners to coordinate the launch in An Giang Province of the first “classic” 100% condom use program (CUP) for entertainment establishments (EEs). This launch aimed to ensure that condoms are available and convenient at all EEs (according to a total market approach) and that condoms are consistently used in all commercial sex transactions. The 100% CUP model was adapted and implemented in Nghe An and Lao Cai in 2012. These programs target both stand-alone EEs (where sex workers meet clients and engage in sex) and hotels and guest houses (where sex workers may bring clients they met elsewhere to have sex). In An Giang, all partners including USAID/HPI, FHI360, PSI, CDC-Lifegap, and the An Giang AIDS Association have worked closely together on the 100% CUP intervention. The Provincial People's Committee provided strong support, and the local authorities, including the police, took the lead on monitoring EEs' compliance⁴. Almost all EEs have signed written commitments to the 100% CUP and have complied with the terms of the program. In 2010, the Ministry of Culture, Sport, and Tourism (MOCST), which has jurisdiction over hotels, guest houses, and other temporary residence establishments for tourists, issued *Decision No. 2859/QD-BVHTTDL* approving a plan for condom provision in these settings during the period 2011-2015. This program calls for the convenient availability of condoms through multiple channels, free of charge (fully subsidized), socially marketed (partially subsidized), and by retail sale (non-subsidized). All establishments are to receive dissemination and training on this program and pilot programs are to be implemented in 10% of establishments in selected provinces based on mapping. By 2015, 80% of establishments in the selected provinces are to have implemented condom programs. The decision calls for multi-sectorial collaboration in the implementation of condom programs in tourist accommodation facilities.

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The legal and policy framework on sex work and HIV/AIDS in Vietnam is evolving toward a more public health orientation.

In 2011, the Vietnamese Government approved and promulgated (by *Decision No. 679/QD-TTg, May 10, 2011*) a new *Program of Action on Sex Work Prevention and Control, 2011-2015*. This documents the widespread existence of sex work in

⁴ See USAID/HPI. Short report on qualitative evaluation of 100% CUP in An Giang (2011); USAID/HPI Implementation Manual for 100% Condom Use Program to Prevent HIV and STIs in Vietnam (based on experience in An Giang Province, Vietnam-2012).

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multiple settings. It acknowledges the HIV risk faced by sex workers and clients and identifies the lack of sex workers' access to harm reduction programs for HIV prevention as a weakness in the response to sex work. The document calls for enforcement to focus on trafficking and abuse of women and children while the programmatic response should emphasize increased access for sex workers to social services, vocational training, alternative employment, health care and HIV prevention services.

The recent policy changes signal a shifting government approach to HIV/AIDS prevention and harm reduction for sex workers and their clients. While the general objectives of the program still include elimination of sex work, the specific activities include expansion of harm reduction and other interventions promoting safe and healthy sexual practices, including 100% CUPs, and call for review and amendment of the legal framework to enable the implementation and scale-up of harm reduction interventions. Pilot harm reduction programs for sex workers are to be implemented in 20 key provinces and cities thought to be "hotspots" for sex work, and national budget allocations are specified for these programs. Provincial People's Committees and Committees on HIV, Drug, and Prostitution Control ("50 committees") are charged with integrating programs for HIV and sex work control.

Vietnam's new *National Strategy for HIV/AIDS Prevention and Control to 2020 with vision to 2030*, promulgated in 2012, calls for scaling up and improving the quality of harm reduction intervention services, including condom promotion.

An *Inter-Ministerial Circular* is forthcoming; to be issued jointly by the MOCST, along with the Ministries of Health, Labor Invalids and Social Affairs and the Ministry of Public Security. This circular will further solidify the legal basis for implementing and expanding condom provision programs including 100% CUPs. This *Circular* applies to all accommodation service establishments and confirms support for a harm reduction approach by the Government of Vietnam. The *Circular* also legitimizes and directs the implementation of condom provision, as well as establishing an enforcement mechanism. Finally, the responsibilities of all relevant sectors in coordination and implementation of condom programs are specified.

In 2013, the Vietnamese Government will promulgate a new Inter-Ministerial Circular that further solidifies the legal basis for implementing and expanding condom provision programs including 100% CUPs for all types of accommodation service establishments.

Next steps

The legal and policy framework on sex work and HIV/AIDS in Vietnam is evolving toward a more public health orientation. However, this process is not complete. Several new legal documents are needed to solidify and confirm the policy changes implied in the Action Program, National Strategy, and on-the-ground support for harm reduction programs such as 100% CUPs. The implementation of the *Law on Handling Administrative Violations* and the *Inter-Ministerial Circular* on condom programs needs to be completed. The current Ordinance on sex work and its implementing Decree should be revised to fully harmonize Vietnam's policy on sex work and sex workers. As the HIV/AIDS law shifts focus to a public health approach, additional policy work needs to be done to ensure the safety for sex workers and their clients.

The policy dialogue on sex work held in October, 2012 in Ha Long, intensified momentum within the government and among other stakeholders to seize what appears to be a golden opportunity to reform Vietnam's legal and policy approach to HIV/AIDS prevention and sex work. USAID/HPI is working closely with the government and international development agencies to conduct a complete review of the legal and policy framework on HIV/AIDS prevention and sex work and develop necessary new legal documents.